

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

C 25192
2013-0131

**AGREEMENT FOR UNPAID UTILITY ACCOUNT COLLECTION SERVICES
FOR THE PUBLIC WORKS & ENGINEERING DEPARTMENT**

I. PARTIES

THIS AGREEMENT FOR UNPAID UTILITY ACCOUNT COLLECTION SERVICES FOR CITY OF HOUSTON DEPARTMENT OF PUBLIC WORKS & ENGINEERING ("Agreement") is made by and among the CITY OF HOUSTON, TEXAS ("City"), a home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council, and 1) GILA LLC D/B/A MUNICIPAL SERVICES BUREAU ("MSB"), a limited liability company doing business in Texas, and 2) GC SERVICES LIMITED PARTNERSHIP ("GC SERVICES"), a limited partnership doing business in Texas. MSB and GC SERVICES may be individually referred to herein as "Contractor" or collectively as "Contractors."

RECITALS

WHEREAS, the City has money owed to the Public Works & Engineering ("PWE") Department for unpaid Accounts; and

WHEREAS, the City wants to establish a collection program with maximum flexibility in order to optimize collections for the PWE Department (the "PWE Department Collection Program"); and

WHEREAS, the PWE Department Director and its employees will implement the PWE Department Collection Program by utilizing multiple collection processes and assigning and

reassigning collection of certain unpaid Accounts to multiple collection Contractors based on the City's needs and the Contractors' success.

NOW THEREFORE, the Parties agree as follows:

A. Address

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

PWE Department City of Houston
P.O. Box 1562
Houston, TX 77251
Attn: PWE Department Director or Designee

With copies to:

Finance Department
City of Houston
611 Walker St, Tenth Floor
Houston, TX 77002
Attn: Finance Director or Designee

AND:

Legal Department
City of Houston
900 Bagby St, Fourth Floor
Houston, TX 77002
Attn: City Attorney or Designee

Contractors:

Gila LLC d/b/a Municipal Services Bureau (MSB)
8325 Tuscany Way - Building 4
Austin, TX 78754
Attention: Bruce Cummings
Chief Executive Officer

GC SERVICES Limited Partnership
6330 Gulfport
Houston, TX 77081
Attention: Linda M. Spellicy
Senior Vice President

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. Scope of Services: Collection of Unpaid Accounts
- B. Equal Employment Opportunity
- C. MWBE Subcontract Terms
- D. Drug Policy Compliance Agreement
- E. Certification of No Safety Impact Positions
- F. Drug Policy Compliance Declaration
- G. Sample Engagement Letter with Attachment 1– Terms of Engagement
Letter

C. Parts Incorporated

The above-described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections of the Agreement and any of the Exhibits arises, the sections of the Agreement control over the Exhibits.


D. Signatures

[By signature of the Mayor and countersignature by the City Controller, and by approval of the PWE Department Director, additional contractors may be added to this Agreement by execution of additional signature pages similar to this page ("Additional Contractors"). It is not necessary for the existing Contractors to approve such additions.

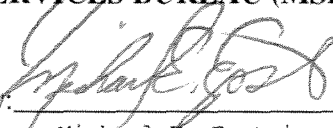
This Agreement is binding on only those Parties who have signed this Agreement as of the First Countersignature Date ("the Original Signatories"). Execution by the other signatories named on this page is not necessary to make this Agreement binding upon the Original Signatories. The other named signatories may become parties to this Agreement in the same manner as Additional Contractors mentioned in the first paragraph of this Article I. E. of this Agreement.]

IN WITNESS WHEREOF, the Original Signatories, through their duly authorized officers, have executed this Agreement in multiple counterparts, each of equal force and effect, effective as of the Effective Date.

ATTEST/SEAL:

By: 
Name: Barbara Fugler
Title: V.P. Finance/Controller

**GILA LLC D/B/A MUNICIPAL
SERVICES BUREAU (MSB)**

By: 
Name: Michael E. Epstein
Title: CFO
Tax I.D. No. 74-2605908

ATTEST/SEAL:

By: _____
Name:
Title:

**GC SERVICES LIMITED
PARTNERSHIP**

By: _____
Name:
Title:
Tax I.D. No. _____

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ATTEST/SEAL:

**GILA LLC D/B/A MUNICIPAL
SERVICES BUREAU (MSB)**

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax I.D. No. _____

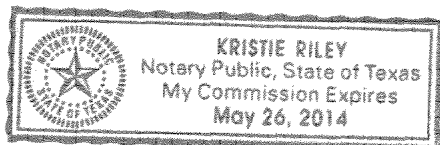
ATTEST/SEAL:

**GC SERVICES LIMITED
PARTNERSHIP**

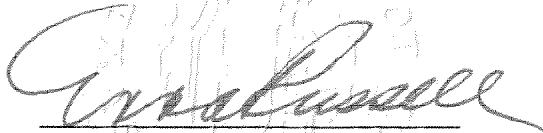
By GC Financial Corp., managing general partner

By: Kristie Riley
Name:
Title:

By: Linda M Spellicy
Name: Linda M Spellicy
Title: Senior Vice President, Treasury
Tax I.D. No. 76-0199626



ATTEST/SEAL:



City Secretary

CITY OF HOUSTON, TEXAS

Signed by:



Mayor *Matthew D. Apple*

APPROVED:



Director
Finance Department

COUNTERSIGNED BY:

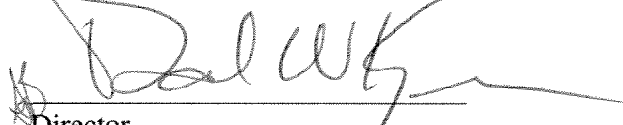


City Controller *Ch B. Bm*

DATE COUNTERSIGNED:

2-21-13

APPROVED:



Director
Department of Public Works and Engineering

APPROVED AS TO FORM:



Sr. Assistant City Attorney
L.D. File No. 0441200035001

II. DEFINITIONS

As used in this Agreement, the following terms shall have meanings set out below:

"Account" means debts and accounts receivable owed to the City by a Person arising out of utility services. Accounts include but are not limited to unpaid charges for water/wastewater, drainage, collection fees, penalties, late fees and costs in connection with water, drainage, and other utility services provided by the City.

"Account Balance" means the amount of money a Person owes for an Account.

"Agreement" means this Agreement between the Parties, including all exhibits and any written amendments thereto, which have been authorized by City Council by ordinance or motion and approved by Contractors.

"Agreement Term" is defined in Article V.

"Business Day" means every day except Saturday, Sunday or a designated City Holiday.

"Cash Collection Rate" means the total payments received divided by the total assigned during a period established in the Engagement Letter. The cash collection rate excludes any amounts recalled, suspended, or dismissed by the PWE Department.

"Collection System" means a computerized system—including but not limited to functional specifications, notice and warrant forms, telephone scripts, database design, transaction coding structures, underlying methodology, software implementation and all other documents and things created, developed and/or used in connection with the performance of this Agreement—for turnkey collection of Accounts assigned to Contractor for collection.

"Competitive Challenge Model" is a financial management tool the City is implementing for this Agreement, and is further described in Article III.B.

"Contractor(s)" is defined in the preamble of this Agreement and includes their respective successors and assigns.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Attorney" means the currently appointed or acting City Attorney or his/her designee.

"Debtor" means the Person liable for payment of an Account.

"Difficult to Collect" means an Account that 1) is unlikely to be collectible without substantial increased effort or cost expended by the Contractor, or 2) would likely require litigation that would not be cost effective for a Contractor absent enhanced financial incentive.

"Documents" include the Collection System, notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, scripts, notices, the original tracings of all drawings, designs and plans, electronic data and computer programs and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement, or develops in conjunction with the City or with the Contractor's subcontractors.

"Due Date" means the date upon which payment is specified to be made on the face of the utility bill, notice, invoice or other similar writing provided to the Contractor upon referral, unless a different date is specified to Contractor by the PWE Department Director or his designee.

"Effective Date of the Agreement" means the First Date of Countersignature by the City Controller in this Agreement.

"Effective Date of an Engagement Letter" means the date signed by the Mayor as shown on the signature page of that Engagement Letter.

"Engagement Letter" means the agreement between the City and a Contractor that assigns

Accounts for collection and obligates the Contractor to perform specified services for the City,

and obligates the City to pay Contractor for those services, all on the terms and conditions specified therein. Each Engagement Letter will be similar in form and content to the Sample Engagement Letter attached as Exhibit "G" to this Agreement.

"First Date of Countersignature" in this Agreement means that date shown as the earliest date countersigned by the City Controller, and not the date of any subsequently countersigned signature pages of this Agreement.

"Maximum Collection Fee Payment" means the maximum amount to be paid by the City to a Contractor for its collection services under this Agreement which shall not exceed:

- 1) 30% of the total Account Balances actually collected by Contractor minus costs and fees owed to state agencies, if applicable; and
- 2) 75% of the total Account Balances actually collected by Contractor minus costs and fees owed to state agencies on Accounts determined by the City Attorney to be Difficult to Collect.

Maximum Collection Fee Payment shall come out of Account Balances actually collected by Contractor and no other source.

"Negotiated Collection Fee Payment" means the fee payment as set out in an Engagement Letter and agreed to between the PWE Department Director and a specific Contractor for its collection services under this Agreement, not to exceed the Maximum Collection Fee Payment.

"Parties" mean all the entities set out in the Preamble who have executed and are bound by this Agreement. Parties may include additional Contractors from the approved Vendor Pool, who may be added to this Agreement at any time at the sole discretion of the City, without the consent of the existing Contractors.

"Past Due" means unpaid after the Due Date.

"Person" includes an individual, a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity, but does not include the City.

"PWE Department" means the City of Houston Public Works & Engineering Department.

"PWE Department Director" means the currently appointed or acting Director of the City of Houston Public Works & Engineering Department, or his designee.

"Revenue Pool" is one or more Revenue Streams that exist in a single Department, or that share financial, legal and practical characteristics that require or will benefit from assignment to the same Revenue Pool, or aid the management and cost-effectiveness of debt collection.

"Revenue Stream" is a flow of funds into the City from a particular source, or an identifiable segment of that flow.

"Revenue Stream Department" or "Revenue Department" means the City Department that is a source of the unpaid Accounts to be collected. The PWE Department is the Revenue Stream Department for Accounts related to unpaid charges for water, wastewater and drainage to be collected under this Agreement.

"Vendor Pool" is one or more collection services contractors who are either parties to this Agreement or selected from vendors who have been determined by the Mayor to meet the qualifications set out in Exhibit A to Ordinance No. 2013-0131. A Vendor Pool is defined and established at the sole discretion of City for its convenience, to aid the management and cost-effectiveness of debt collection, or assist the evaluation of vendor performance. The City may choose to assign a vendor to more than one Vendor Pool. Assignment to a Vendor Pool does not confer any legal rights on a Contractor.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, Contractor(s) shall provide all labor, material, and supervision necessary to perform the specific collection services described in an Engagement Letter which may be duly executed between the PWE Department Director and a Contractor, substantially similar to the form attached to this Agreement as Exhibit "G". Each Contractor shall negotiate the Engagement Letter with the PWE Department Director in good faith. The Engagement Letter's Scope of Services will include all or part of the tasks set out in the Scope of Services attached to this Agreement as Exhibit "A", and such other related services as the PWE Department Director determines necessary for the purposes of this Agreement.

B. Competitive Challenge Model

"Competitive Challenge Model" is a financial management tool in which multiple qualified Contractors compete against each other for Accounts to be assigned to them for collection. The PWE Department Director will develop evaluation criteria, quantitative and qualitative, to measure the relative performance of the Contractors. The PWE Department Director may transfer Accounts from one Contractor to another according to his/her consideration of the criteria. Contractors acknowledge and agree that the PWE Department Director has sole discretion to manage the Competitive Challenge Model and all related processes, including without limitation 1) establishment of the standards and criteria used to evaluate Contractor performance, 2) application of those standards and criteria, 3) assignment and recall of Accounts, 4) evaluation of Contractor performance, 5) Revenue Pools and Vendor Pools and 6) the selection of additional contractors, as authorized by ordinance. Contractors

further acknowledge and agree that it is the City's intent to increase assignment of Accounts to

better performers, and decrease assignments to lower performers. Cash Collection Rate will be one measure of performance.

C. Reports

Contractor(s) shall prepare and submit reports as requested by the PWE Department Director in each Engagement Letter.

D. RELEASE

CONTRACTORS AGREE TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

E. INDEMNIFICATION

(1) CONTRACTORS AGREE TO AND SHALL DEFEND, INDEMNIFY, HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO VIOLATIONS OF APPLICABLE DEBT COLLECTION OR PRIVACY LAWS, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) INCURRED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (a) CONTRACTORS' AND/OR THEIR RESPECTIVE AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, FOR PURPOSES OF THIS SECTION E, CONTRACTORS) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (b) THE CITY'S AND CONTRACTORS' ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTORS ARE IMMUNE FROM LIABILITY OR NOT; AND
- (c) THE CITY'S AND CONTRACTORS' ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTORS ARE IMMUNE FROM LIABILITY OR NOT.

CONTRACTORS SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTORS' INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. EXCEPT AS OTHERWISE PROVIDED HEREIN, CONTRACTORS SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

(2) CONTRACTORS SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES SUPPLYING LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTORS AGREE TO INDEMNIFY, SAVE, PROTECT, AND HOLD HARMLESS (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS AND ALL OTHER DEFENSE COSTS AND INTEREST) THE CITY ITSELF, ITS PRESENT, FORMER AND FUTURE ELECTED AND APPOINTED OFFICIALS, OFFICERS, REPRESENTATIVES,

ATTORNEYS, INSURERS, AGENTS, SERVANTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, AND ALL AFFILIATED PERSONS AND ENTITIES [REFERRED TO JOINTLY IN THIS PARAGRAPH AS "CITY"] OF, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, JUDGMENTS, FINES, PENALTIES, DEMANDS, DAMAGES, LOSS OF USE OR SERVICES, LIABILITIES AND CAUSES OF ACTION, KNOWN AND UNKNOWN, AT LAW AND IN EQUITY, IN CONTRACT, IN TORT, UNDER STATE OR FEDERAL STATUTES OR PURSUANT TO THE CITY'S CHARTER OR THE TEXAS OR UNITED STATES CONSTITUTIONS (COLLECTIVELY "CLAIMS"), INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF THE ACTUAL OR ALLEGED INTENTIONAL CONDUCT, SOLE NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY, OR THE ACTUAL OR ALLEGED STRICT, CONSTITUTIONAL OR STATUTORY LIABILITY OF THE CITY, ACCRUING IN ANY WAY TO ANY OF CONTRACTORS' AGENTS, EMPLOYEES, SERVANTS, SUBCONTRACTORS AND/OR SUPPLIERS AND/OR BY ANY OTHER THIRD PARTY AND/OR ENTITY CLAIMING, BY THROUGH AND/OR UNDER CONTRACTORS AGAINST THE CITY, AS A RESULT OF ANY ACT, OMISSION, EVENT, TRANSACTION OR OCCURRENCE IN ANY WAY ARISING OUT OF, RELATING TO OR TOUCHING UPON THIS AGREEMENT.

F. RELEASE AND INDEMNIFICATION – (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)

CONTRACTORS AGREE TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY

ANY PARTY, INCLUDING CONTRACTORS, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTORS SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTORS SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTORS SHALL, AT THEIR OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTORS SHALL REFUND THE PURCHASE PRICE.

G. SUBCONTRACTORS' INDEMNIFICATION

CONTRACTORS SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY AS SET FORTH IN THIS AGREEMENT.

H. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City or Contractors receive notice of any claim or circumstances that could give rise to an indemnified loss, the receiving party shall give written notice to the other party within thirty (30) days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractors are prejudiced, suffer loss, or incur expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractors may assume the defense of the claim at their own expense with counsel chosen by them that is reasonable satisfactory to the City. Contractors shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractors must advise the City as to whether or not they will defend the claim. If Contractors do not assume the defense, the City shall assume and control the defense, and all defense expenses incurred by the City constitute an indemnification loss.

(b) Continued Participation. If Contractors elect to defend the claim, the City may, through separate counsel, participate in (but not control) the defense and may participate in (but not control) any settlement negotiations. Contractors may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive

relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractors do not fund in full, or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

I. Insurance

Contractors shall each maintain in effect certain insurance coverage, which is described as follows:

(1) Risks and Limits of Liability. Contractors shall each maintain the following coverages and limits of liability:

| <u>Coverage</u> | <u>Limit of Liability</u> |
|--|--|
| Workers' Compensation | Statutory for Workers' Compensation |
| Employer's Liability | Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee) |
| Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations | Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence and \$1,000,000 aggregate |
| Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Owned, Non-Owned and Hired Auto Coverage) | \$1,000,000 combined single limit per occurrence |
| Professional Liability Insurance | \$1,000,000 combined single limit per occurrence |

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
Unless otherwise indicated.

- (2) Form of Policies. The PWE Department Director may approve the form of the insurance policies, but nothing the PWE Department Director does or fails to do relieves Contractors from their duties to provide the required coverage under this Agreement. The PWE Department Director's actions or inactions do not waive the City's rights under this Agreement.
- (3) Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.
- (4) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- (5) Deductibles. Contractors shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. No policy may be cancelled, materially modified, or nonrenewed unless Contractors give the PWE Department Director 30 days advance written notice. Contractors shall give written notice to the PWE Department Director within five days of the date on which total claims by any party against Contractors reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement

establishing a policy aggregate for the particular project or location subject to this Agreement.

- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.
- (9) Liability for Premium. Contractors shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Contractors shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Contractors shall provide copies of insurance certificates to the Director.
- (11) Proof of Insurance.
 - (a) On the Effective Date and at any time during the term of this Agreement, Contractors shall furnish the PWE Department Director with Certificates of Insurance, including any necessary endorsements, along with an Affidavit from Contractors confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the PWE Department Director, Contractors shall furnish the City with certified copies of Contractor's actual insurance policies.

(b) Contractor shall continuously and without interruption, maintain in full force and effect the required insurance coverages specified in this Section. If Contractors do not comply with this requirement, the PWE Department Director, at his or her sole discretion, may immediately suspend Contractors from any further performance under this Agreement and begin procedures to terminate this Agreement for default. The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(12) Other Insurance. If requested by the PWE Department Director, Contractors shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractors' operations under this Agreement.

J. WARRANTIES

(1) GENERAL WARRANTY

CONTRACTORS' PERFORMANCE SHALL CONFORM TO THE PROFESSIONAL STANDARDS PREVAILING IN HARRIS COUNTY, TEXAS WITH RESPECT TO THE SCOPE, QUALITY, DUE DILIGENCE, AND CARE OF THE SERVICES AND PRODUCTS CONTRACTORS PROVIDES UNDER THIS AGREEMENT.

(2) SYSTEM WARRANTY

EACH CONTRACTOR WARRANTS THAT ITS COLLECTION SYSTEM WILL PERFORM. THE CONTRACTOR IS RESPONSIBLE FOR THE PROMPT CORRECTION OF ANY ERRORS OR OMISSIONS. IN THE EVENT OF ANY INTERRUPTION OF SERVICE, OR FAILURE OF CONTRACTOR'S COLLECTION SYSTEM OR CONTRACTOR'S PERSONNEL TO PERFORM

SERVICE AS SPECIFIED IN THIS AGREEMENT, THE CONTRACTOR SHALL IMMEDIATELY RESTORE AND PROVIDE SUCH SERVICES TO THE CITY.

K. Licenses and Permits

Contractors shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractors shall immediately notify the PWE Department Director of any suspension, revocation, or other detrimental action against the license of any agent, servant or employee of Contractors who is providing services under this Agreement.

L. Compliance with Laws

Contractors shall comply with all applicable state, federal laws and regulations and the City Charter and Code of Ordinances, particularly credit reporting and debt collection laws.

M. Compliance with Equal Opportunity Ordinance

Contractors shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "B".

N. MWBE Compliance

Contractors shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractors shall make good faith efforts to award subcontracts or supply agreements in at least 15% of the value of the issued Engagement Letter to MWBEs. Contractors acknowledge that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

Contractors shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration if directed to do so by the OBO Director.

MWBE subcontracts must contain the terms set out in Exhibit "C". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the attorneys of the respective parties must also sign the subcontract.

O. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractors shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractors shall file with Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D" together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E".

If Contractors file a written designation of safety impact positions with their Drug Policy Compliance Agreement, they also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F". Contractors shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration

of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractors begin work under this Agreement.

(3) Contractors also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractors' employee work force.

(4) Contractors shall require that their subcontractors comply with the Executive Order, and Contractors shall secure and maintain the required documents for City inspection.

P. Conveyance of Intellectual Property Developed in Connection with this Agreement by Contractors to City

Except as prohibited by any licensing agreements between the Contractors and their software providers, each Contractor hereby conveys and assigns to the City for all time, such Contractor's entire interest and full ownership worldwide in and to the Documents. The City shall have full and unencumbered rights to develop, use, duplicate, sell, distribute, adapt, modify, enhance, and/or translate the Documents and derivative works thereof. Thus, all rights, including copyrights, patent rights, trade secret rights, trademark and trade dress rights, and any other rights associated with the development, use, duplication, sale, distribution, adaptation, modification, enhancement, and translation of the Documents contemplated hereunder is vested in the City.

Each Contractor hereby agrees to execute all agreements required by the PWE Department Director to further evidence the City's ownership of the Documents. Contractors shall cooperate with the City in registering, creating and enforcing the City's proprietary rights arising pursuant to this Agreement. On termination of this Agreement, or if requested prior to termination by the City, each Contractor shall deliver all originals and copies of the Documents to the City, save and except that the Contractor may retain a copy of the Documents for its

archives. Contractors shall not use, sell, license or market the Documents except to perform this Agreement. Contractors shall obtain written agreements from the authors of the Documents that bind them to the terms of this Agreement.

Q. Time of Performance

The Contractor(s) shall commence services under this Agreement on the date specified in its Engagement Letter. Such services shall be diligently performed and shall be completed within the time period designated by the PWE Department Director, unless the PWE Department Director extends the time for completion in writing. Contractor acknowledges that time is of the essence.

R. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractors have reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

S. Liquidated Damages for Failure to Meet Performance Scorecard

Contractor agrees and acknowledges that, for purposes of this Section S, performance will be measured based on a scorecard of Contractor's performance developed and agreed to by the Contractor and the City. If Contractor fails to meet the performance goals under the scorecard, the City will suffer harm, although the actual damages from that harm are difficult to estimate. Therefore, if Contractor does not meet the performance goals as measured and recorded on the scorecard, Contractor shall pay to the City the amounts stipulated under the Cash Collection Rate Damages Table below as liquidated damages. These amounts are a reasonable forecast of just compensation for the harm to the City. The amount of the liquidated damages are dependent upon the Cash Collection Rate achieved by the Contractor during the period identified

in the Engagement Letter and are based on the sliding scale outlined below. Damages will be assessed at the annual performance review by the PWE Department Director. Payments to the City will be due within thirty (30) days of the conclusion of the performance review meeting and notification in writing by the PWE Department Director to the Contractor.

Cash Collection Rate Damages Table:

| Cash Collection Rate | Damages |
|----------------------|--------------|
| less than 15% | \$200,000.00 |
| 15.1% to 20% | \$100,000.00 |
| 20.1% to 25% | \$50,000.00 |
| Over 25% | 0 |

IV. DUTIES OF THE CITY

A. Payment Terms

Subject to all terms and conditions of this Agreement, the City agrees to pay, and the Contractors agree to accept, as their sole compensation for services performed under this Agreement, the Negotiated Collection Fee Payment as set out in the Engagement Letter to a specific Contractor, which shall never exceed the Maximum Collection Fee Payment defined in this Agreement.

If the PWE Department Director recalls Accounts from one Contractor and assigns them to another Contractor, the original Contractor shall not be paid a collection fee for the re-assigned Accounts, and original Contractor waives any rights to the re-assigned Accounts.

If an Engagement Letter expires or is terminated by the PWE Department Director, the Contractor shall not be paid a collection fee for any amounts collected or received after such expiration or termination, and Contractor waives any rights to amounts collected or received after such expiration or termination.

By executing an Engagement Letter, Contractor acknowledges that the Negotiated Collection Fee Payment set out in the Engagement Letter is sufficient to pay for Contractor's collection services described therein, including all contract costs and fees. All fees and expenses to be paid to Contractor by the City may only be paid from Allocated Funds, as provided in Section D below.

B. Invoicing

Contractor shall submit its invoice to the PWE Department Director for performance of services as set out in the Engagement Letter for any fee that may be due as provided in Section A above, for the preceding calendar month. The City shall pay Contractor within thirty (30) days of the receipt and approval of the invoices.

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director for the applicable services shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

C. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractors' invoices to the City must not contain assessments of any of these taxes. The PWE Department Director will furnish the City's exemption certificate and federal tax identification number to Contractors if requested.

D. Allocation of Funds/Limitation of City's Duty to Pay

The City's duties to pay money to the Contractors for any purpose under this Agreement are limited in their entirety by the provisions of this Section D. In order to comply

with Article II, Section 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated \$0 under this Agreement ("Original Allocation") to pay money to any Contractor under any Engagement Letter and no other funds are allocated hereunder. Notwithstanding anything herein to the contrary, the City's obligations under this Agreement are limited to only the amounts actually collected hereunder and that Contractor agrees to look at only to Account Balances it actually collects for any payments hereunder. The City is permanently excused from making any other payments due under this Agreement for any calendar month if (and to the extent that) during such calendar month, the fee amounts sufficient to make such payments are not collected.

V. TERM AND TERMINATION

A. Agreement Term

1) This Agreement is effective on the First Date of Countersignature herein by the City Controller, except as provided in the following subsection V.A.2), and, unless sooner terminated under other provisions of this Agreement, will remain in effect for five (5) years thereafter (the "Initial Term"). City Council may authorize the PWE Department Director to extend this Agreement for an additional term not to exceed five years ("Extension Term") at any time before the expiration or termination of the Initial Term, subject to allocation of sufficient funding by the City. The Extension Term shall commence immediately upon the expiration or termination of the Initial Term.

2) Additional Contractors' Effective Date. The Effective Date of this Agreement for Additional Contractors ("Additional Contractors' Agreement"), as discussed under Article I.E., shall be the date on which the City Controller countersigns on the signature page adding the Additional Contractors. However, the expiration or termination date of the Additional Contractors' Agreement or any Extension Term thereof shall be the same for those Additional

Contractors as for the Original Signatories and shall be measured from the First Countersignature Date.

3) The PWE Department Director may issue Engagement Letters at any time during the Initial Term of the Agreement and any Extension Term thereof. Each Engagement Letter may be issued for the period set forth therein which shall not exceed three (3) years, plus two automatic renewals of one year each. If the PWE Department Director chooses not to allow an Engagement Letter to automatically renew, he or she will give a written notice of non-renewal to the Contractor at least thirty (30) days before expiration of the then-current term.

If upon the final expiration or other termination of this Agreement, an Engagement Letter(s) is still in effect, then the Agreement shall likewise remain in effect for those purposes necessary and appropriate for the Engagement Letter(s) to continue to its own expiration or termination.

B. Termination for Convenience by City

The PWE Department Director, at his or her sole discretion, may terminate this Agreement and/or any and all Engagement Letters at any time by giving thirty (30) days written notice to each affected Contractor. The City's right to terminate this Agreement or any Engagement Letter for convenience is cumulative of all rights and remedies which exist now or in the future. Termination of one or more Engagement Letters does not terminate this Agreement. On receiving the Engagement Letter termination notice, the affected Contractor shall, unless the notice directs otherwise, immediately discontinue all services or only those services specifically enumerated in the notice under this Agreement and cancel all existing orders and subcontracts or specified services that are chargeable to this Agreement.

**TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR
SERVICES RENDERED UP TO THE DATE OF TERMINATION ARE**

CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE. TERMINATION FOR CONVENIENCE BY THE CITY DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION) IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

C. Termination for Cause by City

A Contractor's default under an Engagement Letter may also be a default under this Agreement as determined by, and at the sole discretion of, the PWE Department Director. The PWE Department Director, at his or her sole discretion, may terminate each Engagement Letter for cause or allow that Contractor to cure the default as provided below, and take any other action provided in the Engagement Letter. Termination for cause of an Engagement Letter shall not affect the other Engagement Letters or this Agreement, unless specified otherwise. The City's right to terminate an Engagement Letter for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement or any Engagement Letter.
- (2) Contractor becomes insolvent;
- (3) All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) A receiver or trustee is appointed for Contractor.

If a default under subsection (1) above occurs, the PWE Department Director will deliver a written notice to Contractor describing the default (the "Default Notice"). The Default Notice

will set a date by which the default must be cured (the "Cure Date") to the satisfaction of the PWE Department Director, however, in no event will the Cure Date be less than twenty (20) days from the date the Default Notice is actually delivered to the Contractor. The PWE Department Director, at his or her sole option, may extend the Cure Date to a later date. If Contractor does not cure the default before the Cure Date, then the Director may terminate this Agreement on the Cure Date, at no further obligation of the City. To effect final termination, the Director must send written notice to Contractor. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and promptly cancel all orders or subcontracts chargeable to this Agreement.

D. Effects of Termination

Upon termination of an Engagement Letter for cause or convenience, the affected Contractor shall immediately turn over Accounts, records and work in progress to the PWE Department Director. Contractor's right to payments for collections received after the termination date is extinguished upon termination, and Contractor waives any and all rights to such collections.

VI. MISCELLANEOUS

A. Independent Contractor

It is expressly understood and agreed that each Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the city. Except as herein provided, Contractors shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors. The doctrine of respondeat superior shall not apply as between the City and Contractors, its officers, agents, employees,

contractors, and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and the Contractors.

B. Severability

If any part of this Agreement is for any reason terminated or found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

C. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (expressed or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

D. Written Amendment

This Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance or motion adopted by the City Council) and by the Contractors. The PWE Department Director is only authorized to perform the respective functions specifically delegated to him or her in this Agreement and is not authorized to vary the terms of this Agreement.

E. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

F. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States

Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

G. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

H. Non-Waiver

Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

I. Inspections and Audits

City representatives may perform, or have performed, (1) audits of each Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractors shall keep their books and records available for this purpose for at least four years after this Agreement terminates or expires. This provision does not affect the applicable statute of limitations.

J. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractors shall provide to the City

Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

K. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

L. Survival

Contractors shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

M. Publicity

Contractors shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the PWE Department Director.

N. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractors only.

O. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer, agent or employee of the City.

P. Business Structure and Assignments

Contractors shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the PWE Department Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractors shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractors shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

Q. Remedies Cumulative

Except as otherwise provided, the rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereafter existing whether by statute, at law, or in equity; provided, however, that neither party may terminate its duties under this Agreement except in accordance with its provisions.

R. Force Majeure

1. Timely performance by all parties is essential to this Agreement. However, no party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and

- (b) provides the other party with prompt written notice of the cause of the Force Majeure and its anticipated effect.

3. The City may perform contract functions itself or contract them out to others during periods of Force Majeure if the PWE Department Director so chooses. Such performance is not a default or breach of this Agreement by the City.

4. If the Force Majeure continues for more than three (3) days from the date performance is affected, the PWE Department Director may terminate this Agreement by giving 7 days' written notice to Contractors. Any termination is not a default or breach of this Agreement. **CONTRACTORS WAIVE ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE TO CONTRACTORS, IF ANY, UNDER THIS AGREEMENT AT THE TIME OF THE TERMINATION.**

5. Contractors are not relieved from performing their obligations under this Agreement due to a strike or work slowdown of their employees. Contractors shall employ only fully trained and qualified personnel.

6. The Contractors shall bear any costs associated with recreating data files, and any other cost incurred by the City because of the interruption of services.

S. Waiver, Estoppel and Laches

The Parties expressly agree that the doctrines of Waiver, Estoppel and Laches do not apply to the City.

T. CONTRACTORS' DEBT

IF ANY CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY

NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE/SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

CONTRACTORS SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

U. Addition of Parties to Agreement

Contractors acknowledge and consent to the City's addition of other vendors from the Vendor Pool as parties to this Agreement. The City shall not be required to notify Contractors when other parties are added and any related documents under this subsection shall not require Contractors consent or signatures.

V. Addition of Revenue Streams to Agreement

Contractors acknowledge and consent to the addition or removal of Revenue Streams from this Agreement at any time at sole discretion of PWE Department Director. Such removal shall not be permitted if it would cause termination of an Engagement Letter, without consent of the Contractor on that Engagement Letter. The City shall not be required to notify Contractors when Revenue Streams are added or removed.

W. Contractor's Proprietary Collections System

Section III.P. of this Agreement notwithstanding, if a Contractor has developed a proprietary collections system before entering into this Agreement, it shall provide to the

Director a confidential written description of its system in sufficient detail to identify the items considered proprietary without disclosing the specific proprietary information ("Proprietary System Description") within 45 days of Countersignature of this Agreement. Section III.P. of this Agreement shall not apply to items or information described in the Proprietary System Description. The Director shall maintain the confidentiality of the Proprietary System Description to the extent allowed by law, including but not limited to the Texas Public Information Act.

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EXHIBIT "A"

SCOPE OF SERVICES PUBLIC WORKS & ENGINEERING DEPARTMENT UTILITY ACCOUNT COLLECTION SERVICES

A. Definitions

As used in this Exhibit "A", the following terms have the meanings set out below:

"Account Database" means a file with all assigned Accounts, to be maintained by the Contractor under the terms of the Engagement Letter.

"Debtor" means a Person liable for payment of an Account for water/wastewater/drainage utility debts.

"Gross Collections" means all payments of charges, fines and/or fees and penalties attributable to water/wastewater/drainage utility debts. Gross Collections are calculated before deduction of any administrative costs or mandated payments to the State of Texas or other deductions.

"PWE Department Director" or "Director" means the Director of the Public Works & Engineering Department, or the person he/she designates.

B. Description of Debt

Accounts shall be assigned to the Contractor for collection at the discretion of the Director. At the time the Director assigns the Accounts, the City will add and apply all late payment penalties as authorized by law; Contractor shall not add any additional fees to the Account.

Upon issuance of the Engagement Letter, Contractor shall assume responsibility for collection efforts as specified therein.

C. Scope of Services

Contractor shall conduct the following functions. For all Accounts, Contractor shall implement all or part of the services listed below, as assigned in the Engagement Letter (where applicable) including, but not limited to:

1. Account Management – inquiries, correspondence, updating records by submitting the posting of payment activity, maintaining a secure database, downloads of specified information in a database backup or flat file format.

2. Customer Identification and Address Research

- i. Electronic skip tracing – internal Contractor process and submission to a minimum of two (2) external electronic service providers. A waterfall skip tracing process is preferred.
 - ii. Manual skip tracing – for Accounts where electronic skip tracing yields no result and meets a minimum criteria proposed and agreed to by the City.
 - iii. Bankruptcy information – checking all Accounts initially and periodically thereafter to see if Debtor has filed for bankruptcy. Contractor will promptly notify City for any Debtor having filed.
 - iv. Death – checking all Accounts initially and periodically thereafter to verify the Debtor is not deceased. Contractor will promptly notify City for any Debtor who is deceased.
3. Mail Notices – Contractor shall execute mailings included in the collection plan outlined in Engagement Letter, which include mailings to Debtors. Contractor shall maintain complete documentation of all noticing activity and provide to Director upon request. At a minimum, the Contractor shall send at least one (1) notice within the first sixty (60) business days of initial Account assignment or acquisition of a valid address, as directed by the Director.
- i. If mail is returned at any time, the Contractor shall verify/re-verify the address via skip tracing or other methods approved by the City. Upon obtaining a valid address the Contractor shall repeat the below schedule from the date the valid address has been obtained. The Contractor shall maintain Account contact history and all updates electronically.
4. Telephone Efforts and Contacts – Contractor shall execute telephone efforts included in the collection plan set forth in the Engagement Letter. Contractor shall maintain detailed electronic records of all Debtor contacts.

At a minimum, the Contractor shall make no less than six (6) calls with at least one in person contact to the delinquent account. In person contact means a live telephone contact (agent to responsible party) and does not include a voicemail or leaving a message.

5. Litigation – Contractor shall litigate cases based upon case selection criteria approved by the City Attorney, who also shall approve Contractor's hiring of attorneys for the handling of litigation under this subsection 5. Contractor shall provide a detailed litigation strategy consistent with the approved criteria to the PWE Department Director and the City Attorney for approval by the City Attorney. On the 15th of each month Contractor shall submit a list of at least 100 cases that its collections attorney recommends for litigation, and a

status report of each case in litigation. Following written authorization of the City Attorney, the Contractor's collections attorney shall proceed with litigation consistent with law, including Rules of the State Bar of Texas. All attorney fees, court costs, and expenses, including defense of any claims asserted against the City shall be paid by Contractor out of its collection payments and the City shall have no obligation to make any payment hereunder in excess of the original negotiated fees.

6. Credit Bureau Reporting – Contractor shall be responsible for reporting to the national Credit Bureaus the number of debtors as authorized by the Director. The specific language and process regarding credit bureau reporting must comply with all state, federal and local laws as well as be approved by the Director. Contractor shall assume all legal liability for ensuring its reporting practices comply with Federal, State and local law. Contractor shall indemnify and defend the City for damages incurred by the City for Contractor's actual or alleged negligence or intentional acts or omissions in the performance of services under this subsection 6.
7. Non-traditional Collection Efforts – Contractor shall submit a detailed marketing strategy, including scripts, to PWE Department Director. Any approved strategy must be implemented no later than a date set forth by the Director. Contractor shall ensure that all Non-traditional collection efforts comply with applicable law.
8. Complaints – Contractor shall maintain a detailed database of the complaint and the resolution, as well as the elapsed time between each. Timely resolution of the issues and complaints shall be accomplished by Contractor. A turnaround of ten (10) Business Days is the maximum to resolve a complaint from the customer. Both complaint and resolution must be provided to the Director as part of the invoice process.

Contractor's employees shall be courteous, efficient, and committed to offering the highest degree of service to the public. If, in the Director's determination, the Contractor is not interacting in a positive and polite manner with citizens, the PWE Department Director may notify the Contractor of such determination and the Contractor shall immediately take all remedial steps to conform to the standards required in the agreement.

9. Reporting – Contractor shall submit all reports required by the PWE Department Director no later than the fifteenth (15th) business day of the following month. All reports must be electronic and shall be part of the invoice process.
 1. Monthly report outlining the effectiveness of the Contractor's electronic skip tracing efforts.

2. Monthly report outlining the effectiveness of the Contractor's manual skip tracing efforts.
 3. Monthly report that summarizes the accounts under a payment plan.
 4. Monthly report that summarizes the number of accounts that promise-to-pay.
 5. Monthly report summarizing the mail campaigns.
 6. Monthly report summarizing the phone campaigns.
 7. Monthly report outlining the number of accounts referred to the credit bureau.
 8. Monthly report outlining the number of accounts in litigation for the current period and overall (if applicable). Monthly reporting outlining non-traditional activities undertaken, accounts impacted, and results of the non-traditional activities.
 9. Monthly report that summarizes the number of complaints filed with the Contractor.
 10. Monthly report that summarizes disputes and complaints.
10. Payment Processing – Contractor shall accommodate all payment methods provided to Account holders, including: mail (payment sent with payment coupon), online check payment, online debit card or credit card payment, pay by phone, and instructions for those wanting to pay in person. All payments must be updated in Contractor's Account Database daily.
- i. Information System Service Requirements – Contractor's computer system shall interface with both the City's account management/billing system(s), to allow for daily uploads and downloads of Accounts. Contractor's system shall meet all requirements as set forth in the Engagement Letter.

11. Recall Provisions

The PWE Department Director, at his/her own discretion, may elect to recall any portion of the Past Due Accounts awarded to the Contractor without monetary charge of any kind to the City. For accounts that do not require immediate cessation of collections activities, the Contractor will be given 30 days' notice of the City's intent to recall or suspend an account. Contractor agrees to return to City upon request, at no charge, any Account referred to the Contractor.

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as

directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "C"

MWBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunities Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As concluded by the parties to this subcontract, and as evidenced by their signature hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Office of Business Opportunities.
 - c. Upon submittal of the matter to arbitration each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "E"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing _____
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

| | <u>Random</u> | <u>Reasonable Suspicion</u> | <u>Post Accident</u> | <u>Total</u> |
|----------------------------|---------------|-----------------------------|----------------------|--------------|
| Number Employees Tested | _____ | _____ | _____ | _____ |
| Number Employees Positive | _____ | _____ | _____ | _____ |
| Percent Employees Positive | _____ | _____ | _____ | _____ |

Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with established established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "G"

SAMPLE ENGAGEMENT LETTER

**TO AGREEMENT FOR UNPAID ACCOUNT COLLECTION SERVICES
FOR PUBLIC WORKS & ENGINEERING DEPARTMENT
(Contract Number _____)**

Date: _____

Engagement Letter #: _____

Revision #: _____

To: Contractor (Name)

This Engagement Letter Number #_____ is entered between the City of Houston ("City") and Contractor as provided in the Agreement for Unpaid Account Collection Services for the Public Works and Engineering Department (the "Agreement") between the Parties, effective _____(date) (Contract No. _____)

1. The terms and conditions of the Agreement are incorporated into this Engagement Letter as though set forth herein in their entirety, except as expressly modified by this Engagement Letter, including any revisions and amendments by the Parties in the attached "Attachment 1-Terms of Engagement Letter" attached hereto and incorporated herein for all purposes.
2. The City hereby assigns to Contractor the Accounts for collection described in the attached "Attachment 1" and intends to assign additional Accounts during the term of this Engagement Letter. Compensation the City will pay and other financial terms are specified in Attachment 1 which is incorporated herein for all purposes, upon the same terms and conditions, subject to allocation of sufficient funding by the City.
3. The Competitive Challenge Model by which the City intends to evaluate Contractor's performance has the features set out in "Attachment 1".
4. Additional terms and conditions are set out in "Attachment 1".
5. Scope of Services. Contractor shall provide all labor, material, and supervision necessary to perform the services described in the attached "Attachment 1".
6. The termination provisions of this Engagement Letter shall be in accordance with Sections V.B. and V.C. of the Agreement.

Please signify your acceptance of this engagement and your agreement to this Engagement Letter by signing below where indicated.

[Insert name of Contractor]

Signature

Name: _____

Title: _____

Date: _____

ATTEST/SEAL:

City Secretary

APPROVED AS TO FORM:

Sr. Assistant City Attorney
L.D. File No. _____

Signature
Director of Public Works
and Engineering Department

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

Date Signed: _____

DATE COUNTERSIGNED:

“Attachment 1”

Terms of Engagement Letter No. _____

- A. Accounts**
- B. Model**
- C. Scope of Services**
- D. Fees**
- E. Incentives**
- F. Other Terms and Conditions**

Public Works & Engineering Department Director Initials: _____

Date: _____

Contractor Initials: _____

Date: _____